



Cenvat Credit to Manufacturer on Input Services

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Introduction

The Cenvat Credit Rules 2004 has merged the credit of service tax paid on input services and of excise duty on inputs and capital goods. Consequently the same

set of rules applies to both a manufacturer and also to a service provider. However the credit availability to manufacturer is substantially more than that available to the service providers.

A manufacturer could avail credit of service tax paid on eligible input services and a service provider could also avail credit of excise duty on inputs and capital goods. Examples of input services could be telephone service, security services, professional services, housekeeping services, labour contractors, rental of premises of outlets selling manufactured goods, outward freight, maintenance services etc.

The golden rule is that the credit is eligible as long as it falls within the definition. The credit of service tax paid on the input services could be set off by the manufacturer against the excise duty payable even on clearances of dutiable final goods.

Cenvat credit on input service

The term input service is defined in Rule 2(l) of CCR:

Rule 2(l) of CENVAT Credit Rules, 204 defines "input service" as:

ANY SERVICE used by a provider of output service for providing output service; or

Used by a manufacturer, whether directly or indirectly, in or in relation to

- ⇒ the manufacture of final product and
- ⇒ clearance of final products upto the place of removal

and **includes service used in relation to,**

- ⇒ modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward

transportation of inputs or capital goods and outward transportation upto the place of removal;

But **Excludes**

(A) **Following declared services:**

- ⇒ Service portion in the execution of works contract,
- ⇒ Construction services including services listed under clause (b) of section 66E of the Finance Act- Declared Service

in so far as they are used for

construction or execution of works contract of a building or a civil structure or a part thereof; of

laying of foundation or making of structures for support of capital goods,

EXCEPT for the provision of one or more of the specified service.

(B) **Following specified services:**

- ⇒ Renting of motor vehicle – in so far as they relate to a motor vehicle which is not a capital goods
- ⇒ General insurance service, servicing, repair and maintenance- in so far as they relate to a motor vehicle which is not a capital goods,

EXCEPT when used by- manufacturer of a motor vehicle,

- Insurance company in respect of motor vehicle insured or reinsured.

(C) **Services such as those provided in relation to**

- ⇒ Outdoor catering,
- ⇒ Beauty treatment, health service, cosmetic and plastic surgery,
- ⇒ Membership of a club, Health and fitness centre,
- ⇒ Life insurance, Health insurance and
- ⇒ Travel benefit is extended to employees on vacation such as leave or home travel concession,

When such services are used primarily for PERSONAL USE or consumption of any EMPLOYEE.

Rule 6 and availment of common credit

The Cenvat credit could be availed on the inputs and input services used for manufacture of dutiable goods. The credit cannot be availed on the inputs and input services used for exempted activity.

If the inputs or input services are used in manufacture of excisable goods and exempted goods, the following options are available.

- a. Separate Record: Maintain separate accounts for receipt, consumption and inventory of input and input service used in relation to manufacturing excisable goods or exempted goods and take CENVAT credit only on that quantity of input or input service which is used in relation to manufacture of excisable goods.
- b. The second option available to the manufacturer of goods is, if he opts not to maintain separate records, he shall be liable to pay an amount equal to 6% of the value of exempted goods and the payment can be made by debit in Cenvat credit account.
- c. **Proportionate Credit Availment:** Where the manufacturer opts not to maintain separate accounts or pay 6% of the value of exempted good/7% exempted services. Then it is required in such circumstances, to follow the formula provided in Rule 6(3A) of Cenvat Credit Rules for the purpose of ascertaining the cenvat credits which he is entitled to avail or for that matter, ascertain and pay the credits relating to the exempted goods manufactured.
- d. Maintain separate accounts for inputs and pay 'amount' as determined under rule 6(3A) in respect of input services. This option as inserted w.e.f. 1-4-2011.

There has been a stay matter in Thyssenkrupp Industries (I) Pvt Ltd Vs CCE 2014-TIOL-1825-CESTAT-MUM where appellant is a manufacturer of excisable goods and also provider of taxable services. They also undertook trading activities which is exempted. During April 2011 to March 2012, the appellant availed CENVAT Credit in respect of services which were **solely** used in the manufacture of excisable goods or used in rendering of taxable output services. They also availed input service credit in respect **common** input services used in the manufacture of dutiable goods, taxable output services and exempted output services as they were not able to maintain separate records.

The view was taken that the credit related to taxable activity to be arrived at by applying formula to total CENVAT Credit taken on input services during the financial year and not the total of the CENVAT Credit taken on common input services. If the formula leads to an anomalous

situation, the remedy lies in amending the provisions of the statute and the judiciary is helpless -
Pre-deposit ordered: CESTAT.

In view of paper writer, if assessee was made to pay/reverse eligible credit on input services used ONLY for manufacture of excisable goods/taxable services by applying formula to extent of value of exempted turnover, it amounts to payment/reversal of eligible credit incurred in respect of excisable goods which is not intention of CCR.

Manufacturer can opt to avail 100% eligible credit on input services used ONLY for manufacture of dutiable goods and avail proportionate credit only on the common input services, used commonly for manufacture of dutiable and exempted goods. In such cases it maybe advisable to do so under intimation.

Issues

Issue: Whether the credit could be availed by a manufacturer on the contractor's bill raised for renovation of the existing factory premises post 1.4.11?

Comment: Yes, it could be availed as it is covered at the limb "modernisation, renovation or repairs of a factory" of input service definition.

Issue: Whether credit could be availed on the architect, interior decorator, project management consultant services in relation to setting up of new factory?

Comment: In the absence of any specific restriction, the credit on same could be availed. However we caution department could seek to restrict such credit availed, citing it is relating to setting up of factory and consequently cannot be availed due to new substituted definition of input service which does not contain 'setting up' limb in the definition wef 1.4.2011. It could avail such credit and intimate the department by RPAD letter in writing and seek confirmation on eligibility to same. If objected then reverse under protest and avail the credit once judicial confirmation of High court is accorded in years to come.

Issue: Whether credit could be availed on the Outdoor caterer services for providing food to staff in a factory covered under Factories Act?

Comment: Yes, such credit could be availed when the facility is given because of statutory obligation under Factories Act, 1948 and it becoming condition of service as far as employees concerned. The canteen facility in such case is not primarily used for personal use or consumption of employee.

Issue: Whether credit could be availed on the services of garden maintenance?

Comment: Yes, as gardening is essential under Pollution control laws to maintain quality of ambient air the same is necessarily business related expenses for the manufacturer, the credit could be admissible. It was similarly held in CCE Vs Vip Industries Ltd(2015-TIOL 1050-CESTAT-Mum).

Issue: Whether credit could be availed by manufacturer on the outward transport of goods from factory to customer place?

Comment: When the ownership and property in goods remained with the manufacturer-seller till delivery of goods to the purchaser door step, assessee could avail the credit of service tax paid on freight for transportation to such place of delivery. This view is supported in several decisions including in Ultra Tech Cement Ltd. Vs. C.C.Ex. and ST, Rohtak [2014-TIOL-1934-CESTAT-DEL].

Issue: Whether the credit could be availed by manufacturer on the Group medi claim insurance / personal accident insurance for employees and their family.

Comment: The facility of mediclaim and group accident insurance is to ensure that the employees health is taken care of so that they could attend to day to day business with a free mind efficiently. The mediclaim and accident insurance is mainly for the business purpose and is not for the personal use of the employee. Therefore there is a possibility that it could be availed. There may be risk of dispute, as there is specific restriction on availment of credit on the life insurance, health insurance when such services are used primarily for personal use or consumption of any employee post 1.4.11.

If manufacturer decides not to avail the credit due to possible dispute, the alternative could be to avail the credit on these now for the past 1 year and reverse the same under protest in writing. One protest letter duly acknowledged by the revenue is sufficient. Subsequently it may avail the credit and reverse till some judicial clarity emerges.

Issue: Whether credit on fire insurance of factory premises could be availed?

Comment: There is no specific exclusion for insurance taken on factory premises. The credit of fire insurance of factory premises is eligible and could be availed. It was held in Best Paper Mills Ltd Vs CCE & ST (2014-TIOL-2355-CESTAT-AHM) that, credit on insurance covering fire and special peril, electronic equipment, terrorism risk, building, machinery, boiler and pressure plants etc is admissible credit.

Issue: Whether Cenvat credit could be availed on the mobile phones used by the employees of the manufacturer of dutiable goods?

Comment: Yes, such credit could be availed as long as the phones are used for business activity and not for personal use.

Issue: Whether the company which is engaged in manufacture of dutiable final products could avail credit of service tax paid on manpower supply from a firm for supply of shop floor technicians, security service association for guarding factory unit, under reverse charge as receiver of service?

Comment: Yes, it could be availed as long as such input services are used for/has nexus to the business activity done by the company.

Issue: Whether a manufacturer could pay the service tax as receiver of service under joint charge and reverse charge out of cenvat credit?

Comment: No, due to specific restriction, the service tax liability has to be paid in cheque/e-payment and after making payment, eligible credit could be availed. The service tax liability could be paid out of credit, only till 1.7.2012.

Issue: Whether credit of accumulated ED Cess and SHE cess on eligible input services of past period could be set off to pay the excise duty liability by manufacturer post 1.3.15?

Comment: There has been a notification no.12/2015-CE(NT) where it has clarified that the ED/SHE cess on inputs/input services/capital goods received on or after 1.3.2015 could be set off to pay excise duty by a manufacturer of final product.

There is no clarity on the past period accumulated credit. Where the manufacturer has substantial accumulated credit could examine legal validity and take a call on set off of such accumulated credit of cess against the Excise duty payable post 1.3.2015 under intimation to department. It is hoped there would be some clarification issued in this regard.

Issue: Whether the credit of the showroom expenses, from where sale of dutiable goods takes place, could be availed by the manufacturer of dutiable goods?

Comment: The cenvat credit on the input services which are used in or in relation to the manufacture of final products and clearance of final products upto place of removal can be availed. It was held in Metro Shoes vs.CCE (2008 (10) S.T.R. 382 (Tri. - Mumbai) assessee was selling the shoes from its retail outlets. It was held that the showroom is the 'place of removal'.

Hence all expenses which are incurred upto sale of goods at showrooms like GTA, warehousing, C&F agents, insurance, internet services, security, courier services, telecom services, pest control services, bank services are all eligible for cenvat credits. This decision was affirmed in 2012 (28) STR J19 (Bombay High Court).

Conclusion

The manufacturers are missing out to avail eligible Cenvat credit on input services due to a wrong understanding that only service provider could avail credit on input services. It has to be ensured by the manufacturer who is paying excise duty to avail the benefit of Cenvat credit on the input services, in the ER-1 returns being filed. This would ensure that there is augmentation of working capital and ease in timely payment of excise duty out of the eligible Cenvat credit on the input services.